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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1932.

No. 721.

BENJAMIN F. JOHNSON,
Petitioner,
against
MANHATTAN RAILWAY COMPANY, *et al.*,
Respondents.

THE AMERICAN BRAKE SHOE AND FOUNDRY COMPANY,
Respondent,
against
INTERBOROUGH RAPID TRANSIT COMPANY,
Respondent.

IN THE MATTER
OF THE
INTERBOROUGH-MANHATTAN RECEIVERSHIP
PROCEEDINGS.

## BRIEF FOR RESPONDENT, INTERBOROUGH RAPID TRANSIT COMPANY, IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI.

The complainant, Benjamin F. Johnson, and intervener, Lillian Boehm, in the first above-entitled suit (in Equity E 71-153) petition for a writ of certiorari to review a decree of the Circuit Court of Appeals for the Second Circuit, entered on the 14th day of December, 1932, upon

a unanimous decision reversing three decrees of the District Court of the United States for the Southern District of New York. The first decree of the District Court, entered on the 20th day of September, 1932 (R. 7), granted leave to the petitioner to file the bill of complaint in the first above-entitled Johnson suit against Manhattan Railway Company and the Receiver thereof, Interborough Rapid Transit Company and the Receivers thereof, The City of New York and American Brake Shoe and Foundry Company. The said Interborough Receivers were appointed in the second above-entitled suit, The American Brake Shoe and Foundry Company against Interborough Rapid Transit Company (hereinafter referred to as the American Brake Shoe case). The second decree, entered on the 18th day of October, 1932 (R. 722), directed the consolidation of the said suits under the caption "In the Matter of the Interborough-Manhattan Receivership Proceedings"; and the third decree, entered on the 18th day of October, 1932 (R. 725), vacated and set aside, as wholly void and of no juridical effect, the orders appointing Receivers of Manhattan Railway Company and Interborough Rapid Transit Company, and other orders made by Hon. Martin T. Manton in the District Court in the American Brake Shoe case.

**The Opinions of the Courts Below.**

The opinion delivered by United States District Judge John M. Woolsey in awarding the second and third abovementioned decrees is reported in 1 F. Supp. 809. The opinion of the Circuit Court of Appeals for the Second Circuit reversing the decrees of the District Court is reported in 61 F. (2d) 934. An opinion of Circuit Judge Manton rendered in the District Court in the American Brake Shoe case is also reported in 1 F. Supp. 820.

**Statement of the Case.**

On August 26, 1932, the American Brake Shoe and Foundry Company, a Delaware corporation, filed a bill in equity in the District Court of the United States for the Southern District of New York against this respondent, a New York railroad corporation, operating an extensive mileage of municipally-owned and privately-owned rapid transit railroads in the City of New York, alleging it to be indebted to the complainant and without financial resources to meet imminently maturing security and rental obligations in excess of $44,000,000, and asking for the appointment of receivers of the Interborough Company. An answer was filed admitting the allegations of the bill of complaint and consenting to the appointment of receivers, which appointment was made by Senior Circuit Judge Manton (R. 180), serving under a designation to hold a District Court (R. 177).

On September 21, 1932, the petitioner Johnson herein, a citizen of the State of Kentucky and shareholder of the Manhattan Railway Company, a lessor of railroads operated by this respondent, and the petitioner, Lillian Boehm, a resident of New York and a creditor, intervening, filed bills in equity in the same Court against the Manhattan and Interborough Companies, their receivers and others, which did not deny, but, on the contrary, asserted the "imperative need" for a receivership for the Interborough.

The Johnson and Boehm bills did not challenge the sufficiency of the bill in the American Brake Shoe case, the propriety of the answer, or the jurisdiction of the District Court in that suit, but alleged in substance that the orders of Judge Manton therein were *coram non judice* and wholly void, and asked that such orders be vacated and new and independent receivers be appointed (R. 13, 80).

The question involved is, as to whether or not, in a case indisputably within the jurisdiction of the District Court for the Southern District of New York, and involving the necessity for the appointment of receivers, an order appointing such receivers is void because, as contended by the petitioners, Senior Circuit Judge Manton was deprived of all jurisdiction to make any order appointing receivers by reason of rules of procedure adopted by the eight Judges of the District Court.

**Summary of the Argument.**

FIRST: Any District Judge, including a Circuit Judge designated to sit as a District Judge, has inherent power under Section 13 of Title 28 of the United States Code and the Rules of Practice for the Courts of Equity promulgated by this Court to make at chambers an interlocutory order appointing a receiver *pendente lite*.

SECOND: The right to exercise the inherent power and jurisdiction of a District Judge to make an interlocutory order appointing receivers, vested in Senior Circuit Judge Manton while serving under a designation to hold a District Court, was not abrogated or restricted by Rules 1-a and 11-a adopted by eight Judges of the District Court for the Southern District of New York.

1. Such rules have not as yet received the concurrence of any of the Circuit Judges of the Second Circuit.

2. Rules 1-a and 11-a of the District Court, even assuming that they were adopted in the manner authorized by this Court, under Equity Rule 79, can-

not be construed as depriving District Judges or Circuit Judges serving as such, of inherent jurisdictional powers.

THIRD: Rules 1-a and 11-a, adopted by the Judges of the Southern District in so far as they may be given any validity whatever, must be construed as being merely directory or procedural in character.

FOURTH: The order of Senior Circuit Judge Manton, designating himself to hold a District Court, is not open to review.

## ARGUMENT

**FIRST: Any District Judge, including a Circuit Judge designated to sit as a District Judge, has inherent power under Section 13 of Title 28 of the United States Code and the Rules of Practice for the Courts of Equity promulgated by this Court to make at chambers an interlocutory order appointing a receiver *pendente lite*.**

The petitioners make no contention that the appointment of receivers was unnecessary, that there was any impropriety in appealing to a Federal District Court therefor, or that the corporation could have done otherwise than admit the allegations of the bill of complaint in the American Brake Shoe case and consent to such appointment. In fact, the petitioners have brought an action in the same Court for similar relief.

The general character of the American Brake Shoe suit, the allegations of the bill of complaint, and the propriety of the answer admitting the same, are not questioned by the petitioners herein. Their criticism, and the ground upon which they seek a review of the proceedings herein,

is that counsel for the parties in the American Brake Shoe case, having a proper case within the jurisdiction of the District Court, applied for the appointment of receivers to a Judge who was without any power or jurisdiction whatever to grant the application. Counsel presenting this brief feels justified in characterizing this contention as extraordinary, because of what is believed to be the generally accepted view, supported by long established practice, followed particularly in the case of railroad receiverships, where continuity of operation is essential in the public interest, that applications for the appointment of temporary receivers may be entertained at chambers by any Judge of the District. The soundness of this practice is based upon the inherent chamber powers which have long been conferred upon all District Judges by the Federal Statutes and the Equity Rules promulgated by this Court.

Section 13 of Title 28 of the United States Code provides that:

> *"The district courts, * * * as courts of equity, shall be deemed always open for the purpose * * * of making and directing all interlocutory motions, orders, rules, and other proceedings preparatory to the hearing, upon their merits, of all causes pending therein.*
>
> *Any district judge may * * * make * * * at chambers * * * all such * * * orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court."*

This Court is authorized by Congress in Section 730 of the United States Code (Rev. St. 917) "generally to regulate the whole practice, to be used, in suits in equity * * * by the district courts." Pursuant to such authority, this

Court has promulgated "Rules of Practice for the Courts of Equity of the United States," commonly referred to as the Equity Rules (226 U. S. 629).

Equity Rule 1 is a restatement of above Section 13 of the United States Code. Rule 1 repeats that "any district judge may * * * make * * * at chambers * * * all such * * * orders," etc. ("such" meaning interlocutory orders made pending the hearing of the causes).

Equity Rule 6 prescribed by this Court provides that:

> *"Each district court shall establish regular times and places * * * when motions requiring notice and hearing may be made and disposed of; but the judge may at any time and place * * * make and direct all interlocutory orders, rulings, and proceedings for the advancement, conduct, and hearing of causes. * * *"*

It is assumed that there is no question that the order of Judge Manton, sitting as a District Judge, was an "interlocutory order." This point was decided by a learned Justice of this Court, Hon. Horace H. Lurton, while serving as Circuit Judge, in the receivership case of the Pere Marquette Railroad (*Horn* v. *Pere Marquette R. Co.*, 151 Fed. 626, 637), where a receiver was appointed at chambers upon consent of the railroad company. Judge Lurton said in his opinion that *"an application for a receiver* PENDENTE LITE *is plainly within any reasonable interpretation of the third rule in equity."* That case was decided in 1907, when the third rule in equity (quoted 151 Fed., p. 636) was practically identical with the second paragraph of Rule 1 above referred to.

The power to grant substantially all forms of interlocutory relief in equity, short of actual trial of causes on the merits, at chambers, has inhered in the Judges of the District Court and also the Judges of the Circuit Court

until abolished in 1911, since the creation of those Courts, and the exercise of such jurisdiction has always constituted an important part of their work. The power was derived originally from the English Chancery practice, but the substance of Section 13 of the present Code was derived from the Act of Cong., August 23, 1842, c. 188, sec. 5, 5 Stat. 517, and appeared in Sections 574 and 638 of the Revised Statutes of 1878, defining, respectively, the power of the District Court in admiralty and equity and the power of the Circuit Court in equity to grant interlocutory orders. In the year 1842 also, this Court adopted revised Equity Rules of Practice, Rules 1 and 3 of which conferred upon any judges of the Circuit Courts, as a court of equity, power to grant interlocutory orders at chambers, which was substantially declaratory of the statute. The Judicial Code of March 3, 1911, abolished the Circuit Courts, and devolved upon the District Courts the jurisdiction in equity formerly possessed by the Circuit Courts. The substance of the foregoing provisions of the Revised Statutes was carried into Section 9 of the Judicial Code, which has been re-enacted as Section 13, Title 28 of the United States Code. At about the time of the adoption of the Judicial Code and on November 4, 1912, this Court adopted revised Equity Rules effective February 1, 1913, which, with subsequent amendments not material here, are in force to-day. Equity Rule 1 as adopted in 1912 was, in substance, a consolidation of the former Rules 1 and 3, and has not since been changed. It is declaratory of the statute with respect to jurisdiction in equity. It is significant that although the judicial sections of the former Revised Statutes and the former Equity Rules were subjected to radical revision in various respects, at the time of the adoption of the Judicial Code of 1911 and the

present Equity Rules in the following year, no substantial change was made in the powers of District Judges, as successors to the Circuit Judges, to grant interlocutory relief in equity at chambers. In addition thereto, this Court adopted a *new* Rule 6, above quoted.

Perhaps note should be made here that the former Rule 3 did not contain the clause "whenever the same are not grantable of course, according to the rules and practice of the court." When the substance of the former Rule 3, with some revision of language, was incorporated in the second sentence of the present Rule 1, at the time of the adoption of the new Equity Rules in 1912, the clause "whenever the same are not grantable of course, according to the rules and practice of the court" was added, similar language appearing in the statute (28 U. S. C. A., Title 28, Sec. 13; Judicial Code, Sec. 9). It is apparent that the phrase "according to the rules and practice of the court" has reference exclusively to motions "grantable of course," which are defined by Equity Rule 5, providing that certain motions and applications therein enumerated (which it is unnecessary to consider here) not requiring any allowance or order of the Court or of a Judge "shall be deemed motions and applications grantable of course by the clerk." The foregoing rule was derived from Rule 5 of the former Equity Rules, and it has constituted, for many years, a definition of "motions grantable of course" by the clerk.

With respect to the inherent powers or jurisdiction of a District Judge, there appears to be little or no distinction between a District Judge and a District Court. As early as 1819, Chief Justice Marshall, sitting as a Circuit Justice in the Circuit Court for the Virginia District in the case

of *United States* v. *The Little Charles*, Fed. Cases No. 15613, declared:

> "By law the District Judge alone composes the court. He is a court wherever and whenever he pleases."

The foregoing view of Chief Justice Marshall has prevailed in the Second Judicial Circuit, where, quite recently, the United States Circuit Court of Appeals declared, in the case of *Ackerson* v. *United States*, 15 Fed. (2d) 268 (1926), that "any acting judge constitutes a District Court." In that case, where a statute provided that an application for suspension of execution of sentence should be made to the "Court," it was held that there was nothing to prevent the applicant "from selecting some particular judge before whom to prefer his appeal for mercy, and nothing positive to prevent him from making the round of all the judges who may hold the court of original jurisdiction in which he was convicted." In the matter here under consideration there can be no doubt as to the right to apply to *any* District Judge for the appointment of a receiver *pendente lite*, for both the statute (United States Code, Title 28, Sec. 13) and Equity Rule 1 specifically provide that the application for interlocutory relief may be made to "*any* District Judge." It was with reference to this matter that the Supreme Court, in the case of *Abbott* v. *Brown*, 241 U. S. 606 (1916), commenting upon Section 13 of Title 28 of the United States Code, stated (at p. 611):

> "The statutory provisions referred to are designed to render the District Courts readily accessible to applicants for justice in all branches of the jurisdiction."

There can be no question that a Circuit Judge, designated to hold a District Court under Section 22 of Title 28 of the United States Code (Judicial Code, Sec. 18), has the right to exercise all the inherent powers of any Judge of the Southern District of New York. Section 22 provides that:

> "During the period of service of any judge designated and assigned under this chapter, he shall have all the powers, and rights, and perform all the duties of a judge of the district * * * to which he has been assigned (excepting the power of appointment to a statutory position or of a permanent designation of a newspaper or depositary of funds)."

Section 23 of Title 28 of the Code (Judicial Code, Sec. 19) provides:

> "It shall be the duty of the district or circuit judge who is designated and appointed under either of sections 17 to 22 of this title, to discharge all the judicial duties for which he is so appointed, during the time for which he is so appointed; and all the acts and proceedings in the courts held by him, or by or before him, in pursuance of said provisions, shall have the same effect and validity as if done by or before the district judge of the said district."

It is significant that Section 22 of Title 28 of the United States Code confers power upon the designated Circuit Judge "to hold a *District Court*," thus investing him with all the powers incidental to the Court itself, including the power to control its procedure as far as essential to the performance of the purpose of his designation.

It follows that the order of Judge Manton was made in the exercise of authority conferred upon him by an Act of Congress and in addition it was pursuant to the Equity Rules governing practice in the District Courts.

**SECOND: The right to exercise the inherent power and jurisdiction of a District Judge to make an interlocutory order appointing receivers, vested in Senior Circuit Judge Manton while serving under a designation to hold a District Court, was not abrogated or restricted by Rules 1-a or 11-a, adopted by eight Judges of the District Court for the Southern District of New York.**

It is contended by the petitioners that Judge Manton (assuming the validity of his designation to hold a District Court) was nevertheless deprived of all jurisdiction to make any order in the American Brake Shoe case by virtue of Rules 1-a and 11-a, adopted June 30, 1932, effective the following day, by the eight District Judges. The holding of District Judge Woolsey, at the motion term, in vacating all decrees of Judge Manton in the American Brake Shoe case, was that the District Judge assigned to hold the Motion Part "was the *only Judge* of this Court who had the power or right to entertain the application for the receivership here in question at the time when it was made" (R. 718; *Johnson* v. *Manhattan Ry. Co.*, 1 F. Supp., at p. 819; italics supplied), and such seems to be the present theory of the petitioners herein, although their original bills of complaint in the Johnson suit allege that there were "other District Judges" who were able to entertain applications for equity receivership (R. 17, 99).

It is assumed to be unnecessary, upon this application, to determine, or question, the right of the Judges of the Southern District to make regulations of practice with respect to the hearing of applications for the appointment of equity receivers or other motions, the observance of which may be insisted upon by the Judges entering into the arrangement. But that the rules here under consideration did not, as contended by the petitioners, deprive

Senior Circuit Judge Manton, while serving under a designation to hold a District Court, of all judicial power or jurisdiction to appoint equity receivers in the American Brake Shoe case is clear upon two grounds:

**1. Such rules have not as yet received the concurrence of any of the Circuit Judges for the Second Circuit.**

The regulation of equity practice in the District Courts has been vested by Congress in this Court by Section 730 of Title 28 of the United States Code. The Congress has also expressly subjected the District Courts to this Court in making rules of practice in equity cases in the District Courts. The District Courts may make rules "not inconsistent with any law of the United States or with any rule prescribed by the Supreme Court under Section 730" (Sec. 731). It was specifically stated by District Judge Woolsey, who participated in making them, that General Rules 1-a and 11-a were promulgated under the power vested in the District Courts by Section 731 (R. 713; *Johnson* v. *Manhattan Ry. Co.*, 1 F. Supp., at p. 817). The only authority which this Court has given to the District Judges to make any rules governing practice in equity cases is contained in Equity Rule 79, entitled "Additional Rules by the District Court," and providing:

> "*With the concurrence of a majority of the circuit judges for the circuit,* the district courts may make any other and further rules and regulations for the practice, proceeding and process, mesne and final, in their respective districts, not inconsistent with the rules hereby prescribed, and from time to time alter and amend the same." (Italics supplied.)

The attempted addition of Rules 1-a and 11-a to the Rules of the District Court by the eight Judges of the Southern District, purporting to become effective July 1,

1932, did not have the concurrence of a majority, or of any of the Circuit Judges for the Circuit. In fact, it appears that no formal notification of the action taken by the District Judges was given to the Circuit Judges until July 7, 1932, when Senior Circuit Judge Manton was advised that the rules in question had become "effective as of July 1, 1932." Instead of concurring therein, Judge Manton at once advised the Senior District Judge of his objections thereto, pointing out also their invalidity (*American Brake Shoe & Foundry Co.* v. *Interborough R. T. Co.*, 1 F. Supp., at p. 825).

That Rule 11-a is an equity rule seems clear, although District Judge Woolsey expressed a contrary view (R. 714; 1 F. Supp. 817). It applies expressly to "applications for the appointment of receivers in equity causes," and even the petitioner herein refers to the rules as "rules governing equity receiverships in this district" (Johnson petition, p. 3).

**2. Rules 1-a and 11-a of the District Court, even assuming that they were adopted in the manner authorized by this Court, under Equity Rule 79, cannot be construed as depriving District Judges, or Circuit Judges serving as such, of inherent jurisdictional powers.**

This Court has said that "no rule of court can enlarge or restrict jurisdiction" (*Washington-Southern Co.* v. *Baltimore Co.*, 263 U. S. 629, 635), and that it cannot itself "by rule, enlarge or restrict its own inherent jurisdiction and powers, or those of the other Courts of the United States or of a Justice or Judge of either, under the constitution and laws of the United States" (*Hudson* v. *Parker*, 156 U. S. 277, 284). What cannot be done by this Court, obviously cannot be done by inferior Courts.

No rule adopted by the Judges of the Southern District, therefore, could deprive the District Judges of their long

established power to grant applications for the appointment of receivers and other forms of interlocutory relief at chambers, expressly secured by Section 13 of Title 28 of the Code and Equity Rule 1. Furthermore, under Section 731, any rule adopted by the District Court must not be inconsistent with "any rule prescribed by the Supreme Court under Section 730." Equity Rule 6 authorizes each District Court to establish motion days and motion parts of the Court. That rule provides the authority under which the District Courts may make administrative rules for the hearing of litigated motions. Equity Rule 6 could not, and does not purport to, confer upon the District Courts any power to limit the jurisdiction over interlocutory matters to be exercised by the District Judges at chambers. On the contrary, it contains an express reservation which preserves the power of the District Judges to make at chambers all interlocutory orders affecting the advancement, conduct and hearing of causes where the application therefor is made without notice or upon such notice as the Judge prescribes.

Rule 1-a is also in conflict with Section 22 of Title 28 of the Code, which expressly states the exceptions with respect to the right of a designated Circuit Judge to exercise the powers and duties of a District Judge, namely, "the power of appointment to a statutory position or of a permanent designation of a newspaper or depository of funds." Rule 1-a, however, adds a further exception or limitation made applicable only to a "designated" Judge, to the effect that he shall do such work only as may be assigned to him by the Senior District Judge.

In another aspect, it is obvious that Rule 1-a is in direct conflict with cognate provisions of the Code. Section 24, in connection with Section 17, authorizes the Senior Circuit Judge, or in his absence, the Circuit Justice, in the

event of it appearing that a Judge of any District Court has an interest or relationship in a pending suit which renders it improper for such District Judge to sit on the trial, to designate and assign a District Judge of any District Court within the same Circuit to discharge the duties of such other District Judge so disqualified. Section 25 provides for a similar procedure, in the event of the filing of an affidavit of personal bias or prejudice on the part of the Judge before whom an action or proceeding is to be tried or heard. In the situations arising under Sections 24 and 25, it is entirely clear that the law requires the interested party to make application to the *Senior Circuit Judge* for the designation of another Judge to hear the particular case. But, under new Rule 1-a of the District Court for the Southern District, as interpreted by the petitioners herein, no such designated Judge could proceed to hear the case unless assigned thereto by the Senior District Judge, which obviously renders the rule clearly inconsistent with the purpose of the law.

**THIRD: Rules 1-a and 11-a adopted by the Judges of the Southern District, in so far as they may be given any validity whatever, must be construed as being merely directory or procedural in character.**

That Rule 11-a is a mere procedural rule or regulation of practice seems indisputable. District Judge Woolsey, in his opinion rendered at the motion term, said that it "merely tells where attorneys have to go to get a receiver appointed. * * * It simply points to the door of the room where applications for receiverships must be made" (R. 714). Upon the argument, he described it as a "calendar" rule (R. 876). As this Court said in *Abbott* v. *Brown* (241 U. S., at p. 609), it was "a mere regulation of practice, and a breach of it would be, at the utmost, a mere

error of procedure, not affecting the jurisdiction." This Court has held that many procedural rights may be waived by the parties. Thus, in a suit for the appointment of a receiver, this Court held that where neither the plaintiff nor the defendant were residents of the district in which a suit was brought, the exemption from being sued out of the district of its domicile was a privilege which was waived by the defendant appearing and consenting (*Central Trust Co.* v. *McGeorge*, 151 U. S. 129); and this Court further held in that case that the waiver was also binding upon stockholders and creditors who petitioned the Court to have the order appointing receivers set aside on the ground of fraud and lack of jurisdiction. In *St. Louis & San Francisco Ry. Co.* v. *McBride*, 141 U. S. 127, this Court said (at p. 130) that a general appearance to the merits, if the case was one of which the Court could take jurisdiction, "waives not only all defects in the service, but all special privileges of the defendant in respect to the particular court in which the action is brought."

Counsel submitting this brief insists that the rules relied on by the petitioner herein did not deprive Judge Manton of jurisdiction to grant the application for the appointment of receivers in the American Brake Shoe case; but, in addition thereto, counsel desires to point out that, in joining with the counsel for the complainant in making the application to Judge Manton, he followed long-established practice, and that no disrespect for any of the Judges of the Southern District was intended. Counsel chose what was believed to be the best course to insure an orderly and just administration of a receivership involving a public service corporation and large financial interests, and in appealing to the Senior Circuit Judge, with a view of insuring the appointment of individual receivers, conceded by the petitioner herein to be proper in this case

(R. 840), counsel was exercising a privilege which seems to have been expressly contemplated by Congress in authorizing the designation of Circuit Judges to hold a District Court. It appears that, when the enactment of the Judicial Code was pending in Congress, as set forth in the Congressional Record, large equity receiverships, especially those relating to railroads, were the subject of somewhat extended discussion, and it was stated by Congressman Mann of Illinois, an influential member of the House of Representatives, that these large cases "were handled mostly in chambers"; and it was further pointed out, in the course of the debate, in answer to doubts raised as to the advisability of the abolition of the jurisdiction of the Circuit Courts over such receiverships, which was brought about by the adoption of the Judicial Code, that, while the Circuit Courts, as such, would no longer exercise jurisdiction, provision had been made under the proposed Section 18 (now 22) of the Code, which would allow Circuit Judges to appoint and control receiverships under designation by the Chief Justice, Circuit Justice or Senior Circuit Judge (46 *Congressional Record*, Part I, pp. 89, 304).

Counsel respectfully insists that he acted well within the rights of the corporation which he was representing in assuming that Rules 1-a and 11-a, which were put in operation over night, could not, and were not intended to, have the effect of suddenly rendering absolutely invalid and unlawful a recognized practice of many years' standing, namely, that of applying to any available Judge of the District Court at chambers, for the appointment of receivers in a proper case, upon consent of the parties, and the further practice of making application to the Senior Circuit Judge for a designation of a Circuit Judge to assume charge of an important proceeding.

**FOURTH: The order of Senior Circuit Judge Manton, designating himself to hold a District Court, is not open to review.**

The petitioners argue at length that there was no "public interest" which authorized Senior Circuit Judge Manton to hold a District Court, and that, therefore, the order of designation was wholly unauthorized and void.

Judge Woolsey held that he could not vacate the order of designation for "want of jurisdiction." Neither the petitioner Johnson nor the petitioner Boehm appealed from that part of his order which denied their motion in that respect. The Circuit Court of Appeals therefore did not have the question before it.

## CONCLUSION.

This respondent respectfully insists that the petitioners have shown no "special and important reasons" which call for a review by this Court of the decision of the Circuit Court of Appeals in this case, but are merely seeking another hearing upon questions thoroughly argued and fully considered in the Court below. This is not a sufficient ground to justify the granting of the writ (*Magnum Import Co.* v. *Coty*, 262 U. S. 159, 163).

**The petitions of the complainant Johnson and the intervener Boehm for review on writ of certiorari should be denied.**

Respectfully submitted,

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